

REMARKS

Claims 1, 2, 7-8 and 10-12 are amended. Claims 5 and 6 are cancelled. New claims 22 and 23 are added. Claims 1-3, and 7-23 are pending and under consideration.

The rejections under 35 U.S.C. § 112 are overcome by the present amendments.

The rejections under 35 U.S.C. § 103 are respectfully traversed. Independent claim 1, for example, recites the first and the second warps being side-by-side in a stretched state of the head receiving part in which the headgear is deformed by the user's head.

Cho

Cho does not specifically teach the particular arrangements of the warps. Instead, the reference generally shows an unstretched state (FIG. 10) and a stretched state (FIG. 11). According to the Examiner, it is inherent of elastic yarns to become flat when stretched and when unstretched to create gathered portions for giving an article adjustable fit characteristics. Although stretching/unstretching could alter the positions of the warps, this does not necessarily mean that any stretchable band would have the particular claimed characteristics, such as "side-by-side warps." For example, as discussed in further detail below, Adamson does not teach side by side warps in the stretched state. Therefore, it cannot be assumed that Cho teaches this feature, just because the band stretches.

It appears that the Examiner may be relying upon Official Notice. Applicants respectfully traverse any such reliance on Official Notice because supporting evidence related to arrangement of warps in a stretched state of the claimed invention has not been provided, and request that the Examiner produce authority for the statement.

The Applicants specifically point out the following errors in the Examiner's action.

First, the Examiner uses common knowledge ("well-known") evidence for the rejection. As explained in the M.P.E.P.,

any facts so noticed should... serve only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground for rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based.

M.P.E.P. § 2144.03

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the limitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this limitation is unique to the present invention (see, M.P.E.P. § 2144.03(A) (the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute").

Third, there is no evidence supporting the Examiner's assertion (see, M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge"). In fact, as discussed below, Adamson teaches an example of a stretched band that does not include side-by-side warps, as claimed.

Fourth, the Examiner appears to be basing the rejections, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such assertion with an affidavit when called for by the Applicant. The Examiner is called upon to support such assertion.

Adamson

Independent claim 1 has been amended to recite features previously recited in claim 6, namely, that the wefts are stretchable yarns. The Examiner admits that Cho does not teach or suggest these features, but instead relies upon Adamson. For the Examiner's convenience, and not to limit the claims, the Examiner's attention is drawn to present FIG. 2A, which illustrates the present weft F in an unstretched state. An advantage of the claimed weft being made of an elastic yarn is that the present weft can surround the warps R1 and R2.

FIGS. 2 and 3 of Adamson illustrate warps 14 and wefts 15. However, the wefts are "non-elastic wefts" (column 2, line 23) and therefore these wefts 15 are not stretchable nor do they surround the warps.

In particular, FIG. 2 of Adamson illustrates an unstretched state, but FIG. 2 of Adamson is quite different from present FIG. 2A. In present FIG. 2A, the weft F is a stretchable yarn and warps R1 and R2 are arranged in vertically separated layers. Also, the weft F encircles the warps R1 and R2 to form loops. As a result, stretchability is improved.

Accordingly, withdrawal of the rejections is requested.

New claims 22 and 23 are patentable over the cited references at least due to their dependence from claim 1.

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: _____

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By: _____



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